IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1084 of 2006
In
SPECIAL CIVIL APPLICATION No. 8384 of 2001
with
CIVIL APPLICATION No.10195 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BOMBAY MERCANTILE COOPERATIVE BANK LTD. - Appellant(s)
Versus
HANIF I SHAIKH - Respondent(s)

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Appearance :

MR PARITOSH CALLA for NANAVATI ASSOCIATES for Appellant(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 18/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. By way of present Appeal filed under Clause -15 of Letters Patent the appellant – original petitioner has challenged the order dated 26.12.2005 passed by the learned Single Judge of this Court in Special Civil Application No.8384 of 2001 partly allowing the said writ petition by granting reinstatement, quashing the order of 25% backwages as was granted by the Labour Court and further imposing the stoppage of 5 increments with future effect instead of 2 as was granted by the Labour Court, Ahmedabad,

vide award dated 17.7.2001 in Reference (ITC) No.147 of 1999.

2. The brief facts giving rise to the present Appeal are that the respondent – workman was serving as a peon with the appellant – Bank involved in the work of cleaning, carrying out the ledgers from one table to another, to put stamp on cheques, to hand over posts to main office or customers, to carry the cash box from strong room, stitch notes, dispatch letters etc.

3. During the period from 1987 to 1994, the respondent – workman had frequently remained absent on unauthorised leave without any prior permission, which is reflected as under.

1987 91 days (unauthorised) + 58 days (casual, privilege and sick leave = 149 days in all.

1988 40 days (unauthorised) + 57 days (casual, privilege and sick leave = 97 days in all.

1989 102 days (unauthorised) + 62 days (casual, privilege and sick leave = 164 days in all.

1990 Remained absent without prior permission from 6.3.1990 for which a charge sheet was issued on 6.3.1990 and after a proper inquiry and looking to the past record of the respondent, the appellant only stopped two of his increments vide letter dated 12.1.1990.

Due to this act, the respondent was requested to remain present regularly to which, the respondent assured vide letter dated 31.1.1990 that he will follow the leave rules and will show improvements in his attendance and further also stated that the management may take deterrent action against him if he repeats the aforesaid misconduct.

4. During 1991 to 1992 the respondent continued his behaviour for which he was issued office order to report to work immediately and improve his behaviour on as many as four occasions i.e. 17.9.1991, 4.10.1991, 20.8.1992 and 10.10.1992.

During 1992 to 1993 – 59 days and 121 days (unauthorised) respectively.

5. Since the respondent continued to remain absent without prior permission, the respondent was given a warning to which, on 28.1.1994, the respondent vide letter had given an assurance to maintain utmost regularity in his attendance, despite which, in the year 1994, he remained absent on 19 occasions for a total period of 105 days.

6. It is also the case of the appellant that since there was no change in the respondent's

behaviour as was apparent from the aforesaid data, the respondent was issued charge sheet and after a proper inquiry, and giving the respondent full opportunity to defend himself, on 16.10.1995, the respondent was dismissed from the service with immediate effect, against which the respondent filed the Appeal before the appellate authority whereby his dismissal was confirmed on 10.1.1996.

7. It is also the case of the appellant that after a period of 3 and half years, the respondent raised a dispute before the Labour Court where he had not only admitted the charges, but submitted a pursis that he does not challenge the legality and validity of the inquiry conducted against him and the same was a part of the record. The Labour Court decided the reference on 17.7.2001 and passed an award directing the appellant to reinstate the respondent with 25% back wages,

which was the subject matter of challenge in Special Civil Application No.8384 of 2001 which has been partly allowed by the learned Single Judge vide an order and judgment dated 26.12.2005 granting reinstatement without back wages, with stoppage of 5 annual increments with future effect.

8. It is this order of the learned Single Judge which is under challenge in the present Letters Patent Appeal filed by the appellant under Clause-15 of Letters Patent.

9. Mr.Paritosh Calla, learned advocate appearing for Nanavati Associates for the appellant has submitted that the impugned judgment and order passed by the learned Single Judge is absolutely unreasonable, unjust, contrary to the weight of evidence on record, contrary to facts as well as law and therefore, deserves to be quashed and set aside. He has further submitted that the

conduct of the respondent amounts to habitual misconduct and habitual absenteeism consistently running into a period of more than six years ultimately leading to a situation, where the appellant has lost confidence in the respondent and loss of confidence is considered to be a valid ground of dismissal by the Hon'ble Supreme Court in plethora of decisions. He has further submitted that the respondent had not only admitted the misconduct time and again but has also submitted a pursis before the Labour Court stating that he did not wish to challenge the legality and validity of the inquiry conducted by the appellant. It is further submitted that the appellant on more than two to three occasions have given a chance to the respondent to improve his behaviour only looking to the past record of the respondent, and despite of this fact, the respondent habitually remained absent compelling the appellant to dismiss him from

the service. He has further submitted that the decision of the learned learned Single Judge reinstating the respondent is contrary to his own findings inasmuch as it has been recorded in the impugned order that the respondent has remained absent from duty for almost five years. He has further submitted that looking to the misconduct of the respondent it is absolutely unreasonable and irrational to grant reinstatement to the respondent in view of the fact that the lenient and liberal view as taken by the appellant of giving warning and chances to the respondent to improve was completely abused and ignored by the respondent compelling the appellant to dismiss him. He has further submitted that the case of the respondent suffers from delay and latches also due to the fact that he had virtually abandoned the cause for a period of more than three years without any sufficient explanation and therefore should not have

been granted reinstatement on this ground alone. He has further submitted that the nature of the work which respondent was handling was such that his absence was creating tremendous inconvenience to the extent that the service to the customers were being delayed ultimately harming the reputation and goodwill of the appellant bank and keeping this fact in mind coupled with the aforesaid facts, reinstatement of the respondent would only set a bad precedent giving rise to an unhealthy working atmosphere in the appellant bank. He has, therefore, submitted that the order of the learned Single Judge is required to be quashed and set aside.

10. Before considering the case of the appellant on merits it is necessary to examine the question of maintainability of the Letters Patent Appeal. Admittedly the Labour Court has passed an award directing

the present appellant to reinstate the respondent with 25% backwages and stoppage of two increments with future effect. The said order has been challenged before the learned Single Judge of this Court in a petition titled as a petition under Articles-226 and 227 of the Constitution of India. However, looking to the fact that the learned Single Judge has modified the said order of the Labour Court and instead of issuing a writ of certiorari, or writ in the nature of mandamus by quashing and setting aside the award dated 17.7.2001 passed by the Labour Court, Ahmedabad in Reference (ITC) No.147 of 1999, he has quashed and set aside the award granting backwages and instead of punishment of imposition of two increments with future effect, punishment of stoppage of five increments with future effect was imposed on the respondent. The award of Labour Court was thus modified to this extent. This modification done by the learned Single Judge

is in exercise of the supervisory jurisdiction conferred on him under Article-227 of the Constitution of Indian and it is settled law that when powers are exercised under Article-227 of the Constitution of India while deciding a writ petition, an Appeal under Clause-15 of Letters Patent is not maintainable. Mr.Calla could not satisfy us as to how the order and judgment passed by the learned Single Judge can be treated as an order passed while exercising power under Articles-226 and 227 of the Constitution of India. We are of the view that the Appeal is not maintainable inasmuch as the learned Single Judge, while deciding the petition, has exercised the supervisory jurisdiction vested in him under Article-227 of the Constitution of India. While delivering the decision under challenge the learned Single Judge has exercised power of superintendence under Article-227 of the Constitution of India, therefore in light of Clause-15 of

Letters Patent, the present Appeal challenging the judgment and order of the learned Single Judge is not maintainable. The prayers made in the petition invoked supervisory jurisdiction of the learned Single Judge of this Court under Article-227 of Constitution of India.

11. Since we have discussed the issue regarding maintainability of Appeal under Clause-15 of Letters Patent against the order and judgment of the learned Single Judge, in our judgment and order of even date passed in Letters Patent Appeal No.1205 of 2006 filed by Dilipkumar Maneklal Vyas against Torrent Power AEC Co., and discussed the entire case law on the subject, we are adopting the same findings and reasonings given in that judgment and for the sake of brevity the same are not repeated here.

12. Apart from this legal issue, we do not

find any justification to interfere in the order of the learned Single Judge, even after considering the merits of the matter. The Labour Court, after having appreciated the facts and evidence on record has come to the conclusion that the present respondent deserves to be reinstated, the order of reinstatement was passed. However, looking to his continuous absence from service the Labour Court has awarded 25% of backwages and stopped two increments with future effect. The learned Single Judge has agreed with the Labour Court so far as reinstatement is concerned. However, considering the long period of absenteeism, the learned Single Judge has quashed and set aside the order with regard to awarding 25% of backwages. The learned Single Judge has also considered that stoppage of two increments with future effect does not commensurate with the guilt that has been committed by the respondent workman and hence he has substituted the

said order and passed the order of stoppage of five increments with future effect. Since the Labour Court as well as learned Single Judge both have considered the facts and evidence in their proper perspective and arrived at the just and proper conclusion looking to the facts and circumstances of the case, it is not appropriate for this Court, while exercising jurisdiction under Clause-15 of Letters Patent, to interfere in the said orders. The scope of the Appellate Court under Clause-15 of the Letters Patent is very limited and unless the order appealed against is absolutely perverse resulting into miscarriage of justice or it is in excess of jurisdiction or without jurisdiction the Court restrains itself from disturbing the said order. We, therefore, do not find any substance in this Appeal even on merits and accordingly it is dismissed at the very threshold.

13. Since the Appeal is dismissed, Civil Application does not survive and it is accordingly rejected.

(A. M. KAPADIA, J.) (K. A. PUJ, J.)

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